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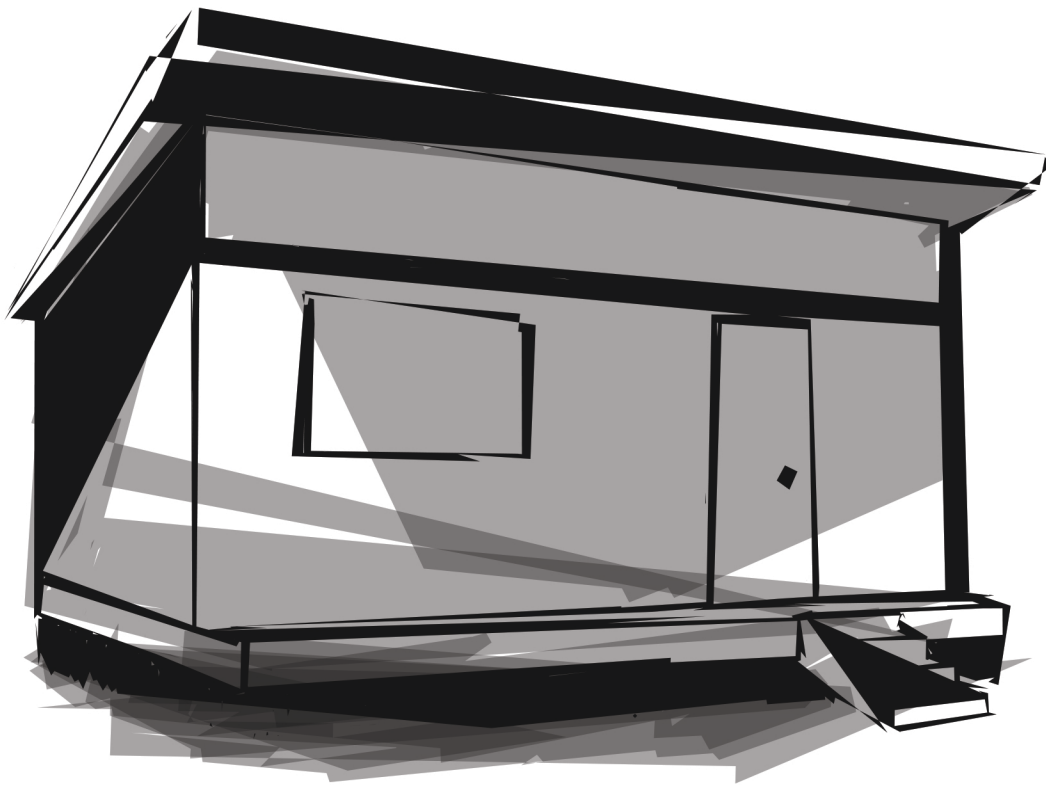
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Authors

Tran Dinh, David Brewster, Anna Fullerton, Greg Huckaby, Mamie Parks, Sara Rankin, Nantiya Ruan, and Elie Zweibel

YES, IN MY BACKYARD

Building ADUs
to Address Homelessness



HOMELESS RIGHTS
ADVOCACY PROJECT



UNIVERSITY *of*
DENVER

STURM COLLEGE OF LAW
Homeless Advocacy Policy Project

Yes, In My Backyard

Building ADUs to Address Homelessness

Authors

Tran Dinh, David Brewster, Anna Fullerton, Gregory Huckaby, and Mamie Parks

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Sara K. Rankin, Nantiya Ruan, and Elie Zwiebel

May 2018

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EXECUTIVE SUMMARY

This report examines how cities and organizations use Accessory Dwelling Units (“ADUs”) as a tool to house individuals experiencing homelessness. ADUs are self-contained living structures located on the property of a single-family home. Several U.S. cities are creating and implementing ADU programs to address affordable housing shortages. Currently, a few forward-looking municipalities and organizations within those municipalities are exploring the use of ADUs to address homelessness. For cities and organizations wishing to implement ADU programs to house individuals experiencing homelessness, this report provides guidance on logistical, legal, and messaging considerations to help make the programs successful.

First, this report highlights innovative programs in four case study cities: The BLOCK Project in Seattle, Washington; A Place for You in Multnomah County, Oregon; the Second Dwelling Unit Pilot Program in Los Angeles County, California; and the West Denver Renaissance Collaborative’s Single Family Plus Initiative in Denver, Colorado. By reviewing the individual structure, funding, matching, and zoning regulations relevant to each project, prospective ADU project managers and homeowners wishing to implement new ADU programs should gain a better understanding of how to create an ADU program that houses individuals experiencing homelessness in their local community.

Next, the report analyzes logistical considerations that ADU project managers must weigh prior to implementing and developing their projects. Primarily, ADU project managers must determine how to fund and staff the project, how they plan on engaging with community members and entities to lower costs and build support for the project, and how to determine eligibility requirements and matchmaking strategies to create a cohesive fit between the homeowner and the resident.

Additionally, this report addresses legal frameworks and relationships implicated in ADU projects. Before an ADU project begins, project managers and interested homeowners must research and understand relevant local zoning regulations to determine whether the municipality permits ADUs on the target property. If local zoning laws do not permit an ADU on the target property, project managers and participants will likely need to contact a local city planner or land use attorney. Further, interested homeowners should understand the financial implications associated with ADUs, most notably, development permitting fees and potential increases in market value and property taxes. Throughout the life of an ADU program, project managers and participants should also recognize and understand the various contractual relationships that form, as well as the rights, responsibilities, and liabilities associated with those contractual relationships. If interested homeowners have outstanding questions about tax and market value implications, or about the contractual relationships that form, they should contact an attorney for accurate and detailed information.

Finally, this report highlights important media and messaging strategies that ADU project managers should consider for gaining long-lasting community support for their program and for individuals experiencing homelessness in their community. In carefully crafting ADU project messages, project managers should identify the target audience, craft a digestible message, convey added value, and choose the optimal message medium.

ADUs are gaining national attention as tools to address the national affordable housing crisis. Local governments and public interest organizations are beginning to recognize ADUs as an innovative tool to provide consistent and integrative housing options for individuals experiencing homelessness. Although there are challenges associated with developing and implementing this type of ADU program, this report acts as a springboard of useful guidance to promote success for these programs.

INTRODUCTION

Cities around the United States are facing affordable housing shortages. Statistics paint a grim picture for the future of affordable housing and an even bleaker picture for individuals on the brink of, or already experiencing, homelessness.

In response to affordable housing shortages, many local governments and organizations are implementing programs that encourage and incentivize construction of ADUs on private property. Some of those programs specifically focus on building ADUs to house individuals experiencing homelessness. In many of those programs, community members can opt-in or apply to have an ADU constructed in their backyard, at little or no cost, in exchange for housing an individual experiencing homelessness.

Admittedly, ADU programs targeting homelessness are not a comprehensive solution to end homelessness, nor do they replace the overwhelming need for increased low-income housing options. However, those programs take an integrative approach in welcoming individuals experiencing homelessness back into communities rather than segregating them from society, and work to eliminate negative stigmas that create barriers between housed and unhoused individuals. Once individuals experiencing homelessness find secure housing within pre-existing community structures, they form relationships with members of the community and gain easier access to other services like addiction counseling and mental health treatment. For these reasons, homeless advocates and local governments across the country are formulating programs that take advantage of the integrative housing alternative that ADUs bring to the fight against homelessness.

This report highlights some of those innovative programs and offers guidance for advocates interested in using ADUs as part of a larger strategy to combat homelessness. It examines some challenges and opportunities associated with ADU projects as witnessed by four ADU project case studies: Seattle's BLOCK Project, Multnomah County's A Place for You, Los Angeles County's Second Dwelling Unit Pilot Program, and Denver's West Denver Renaissance Collaborative Single Family Plus Initiative. This report provides a general background on ADUs before analyzing the structure, eligibility and matching, funding, and zoning components of each case study. Then, it explores some practical questions and logistical considerations generally that should be considered in the beginning stages of an ADU project, such as the matching processes for residents and homeowners, project staffing and funding, and inter-agency cooperation and engagement. Next, the report focuses on three primary legal issues relevant to ADU projects: zoning laws, tax implications and property values, and contractual relationships. Finally, this report explores public messaging considerations that can help maximize support for using ADUs as a tool to address homelessness. By no means exhaustive, this report serves as a general blueprint for cities, local municipalities, and community partners around the country looking for creative alternatives to house individuals experiencing homelessness.

I. Background on Accessory Dwelling Units

ADUs are independent living quarters either attached or detached from the primary single-family home and are legally part of the same property as the primary single-family home.¹ This section first highlights a basic overview of traditional ADU formats. Next, it provides background on why an increasing number of local governments are instituting regulations to encourage ADU development. Finally, this section provides background on the growing housing and homelessness crises in urban centers with the specific goal of showing that ADUs are a useful and beneficial tool to address these concerns.

A. ADU Variations

As independent living quarters, ADUs typically contain full amenities with living space, kitchens, and bathroom facilities.² Modern city planners and land use laws may call ADUs “in-law units, laneway houses, secondary dwelling units,” or similar terms.³ No matter how a locality refers to ADUs, they consistently appear in the same three general formats: internal, attached, or detached units. These unique classifications are characterized by the ADU’s relationship to the primary structure on the single-family lot:

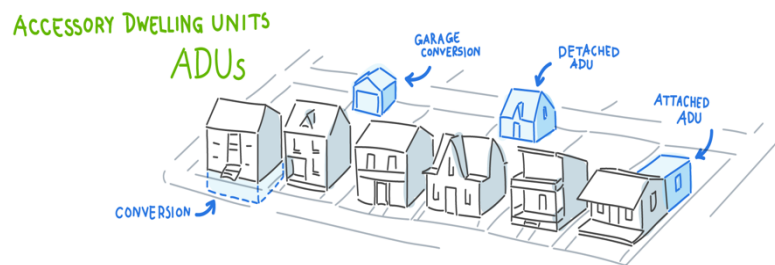


Image source: <https://www.hausable.com/>

Internal ADUs are integrated within an existing structure; examples include converted attics and basements.

Attached ADUs, also known as mother-in-law apartments or accessory apartments, are built as additions to the primary dwelling.

Detached ADUs are structurally independent from the primary residence but are on the same lot. Backyard cottages or garage conversions are popular forms of detached ADUs.⁴ Detached ADUs are the most common variation, and each of the case study programs highlighted in this report utilize or advocate for construction of detached ADUs.⁵

Although city planning practices have recognized the concept of ADUs in these three forms for many years, growing urban populations and accompanying affordable housing issues have increased interest in utilizing ADUs as a tool to create new affordable housing alternatives.

¹ Martin John Brown, *Accessory dwelling units: what they are and why people build them*, AccessoryDwelling.org, <https://accessorydwelling.org/what-adus-are-and-why-people-build-them/> (last visited Apr. 29, 2018).

² *Id.*

³ *Id.*

⁴ MUNICIPAL RESEARCH AND SERVICES CENTER, *Accessory Dwelling Units: Issues & Options* (1995), <http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/ADU30.pdf.aspx?ext=.pdf>.

⁵ Although none of the case studies highlighted in this report build attached ADUs to house individuals experiencing homelessness, attached ADUs are generally less expensive to construct and maintain than detached ADUs, and therefore, attached ADUs should be considered as a viable alternative.

B. Household and Community Trends: Why ADUs are Gaining Attention

Historically, the prevalence of ADUs as an affordable housing alternative has ebbed and flowed. Following WWII, residential development in the 1950s and 1960s focused on low-density sprawling suburbanization to help Americans realize the dream of home ownership.⁶ Because of this low-density focus, many jurisdictions prohibited ADU construction.⁷ But from the 1970s to the 1990s, re-urbanization movements encouraged higher-density development to “limit automobile dependency and improve the quality of life by creating inclusive communities that provide[d] a wide range of housing choices.”⁸

Modern ADUs reflect contemporary housing needs. Declines in average household size increase demand for smaller housing. Between 1960 and 2016, the average household size decreased from 3.33 to 2.53 people.⁹ Single-person households increased from 17.1 percent in 1970, to 27.4 percent in 2012.¹⁰ Further, divorce rates and life expectancy are increasing, each contributing to the decline in average household size.¹¹ By 2035, one out of three households will be headed by older adults, further increasing the demand for new and modified units that meet the needs of aging adults.¹²

ADUs can also increase access to public transit in urban centers, reducing pollution and increasing mobility for the secondary dweller. Thanks to lower construction and utility costs, ADUs are also generally less expensive to rent than primary dwellings. Although many cities still restrict ADU development, a growing number of municipalities are exploring and adopting new regulations that eliminate barriers and encourage ADU construction.¹³ Given the growing housing crisis in urban centers throughout the country, ADU advocates perceive these projects as a simple and inexpensive way for communities to respond to increasingly competitive housing environments by contributing to affordable housing stock and helping to manage increased population density.¹⁴

C. Urban Housing Crisis and Homelessness

Housing prices are rising exponentially in urban centers.¹⁵ What is more, nearly half of the nation’s 100 largest metropolitan areas continue to post declines in low-rent units.¹⁶ Between

⁶ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *ACCESSORY DWELLING UNITS: CASE STUDY* (2008), <https://www.huduser.gov/portal/publications/adu.pdf>; see also KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (Oxford University Press) (1985).

⁷ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 6.

⁸ *Id.*

⁹ U.S. CENSUS BUREAU, *AMERICA’S FAMILIES AND LIVING ARRANGEMENTS: 2012* (Aug. 2013), <https://www.census.gov/prod/2013pubs/p20-570.pdf>.

¹⁰ *Id.*

¹¹ Been, Gross, & Infranca, *Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, NYU Furman Center (Jan. 2014), http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf.

¹² Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Housing*, 18 (2017), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

¹³ See e.g., Mimi Kirk, *The Granny Flats Are Coming*, CITYLAB, Jan. 16, 2018, <https://www.citylab.com/design/2018/01/the-granny-flats-are-coming/550388/>.

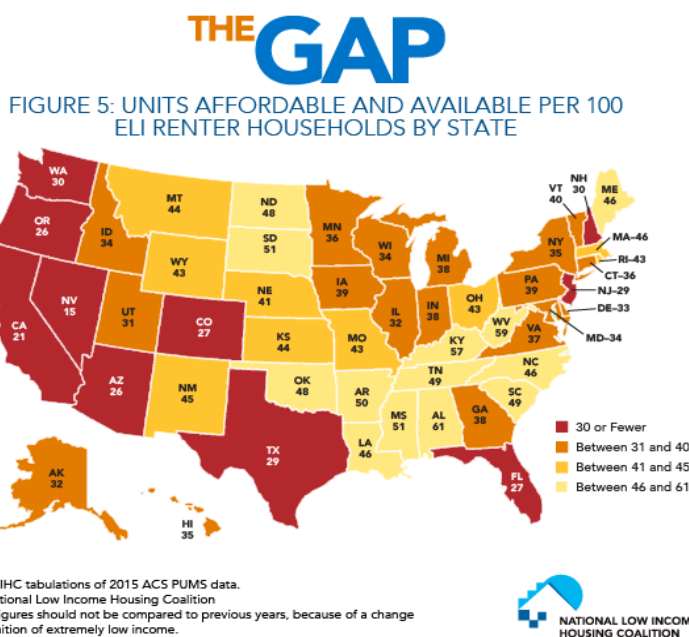
¹⁴ *Id.*

¹⁵ Joint Center for Housing Studies of Harvard University, *supra* note 12, at 3.

2005 and 2015, the number of rental units costing less than \$800 per month declined while the number costing over \$2,000 per month increased by 1.5 million.¹⁷ The number of low-income renters far outstrips the number of available units at the lowest end of the market.¹⁸ This increasing mismatch between supply and demand degrades housing stability.

Low-income renters are particularly vulnerable to eviction or homelessness due to increases in already unaffordable rental prices.¹⁹ Without affordable housing options, the number of individuals experiencing homelessness or at risk of experiencing homelessness is growing.²⁰ Based on 2017 national homelessness estimates,²¹ approximately 65 percent of people experiencing homelessness were sheltered in emergency shelters or transitional housing, and 35 percent were unsheltered.²² Although overall homelessness increased by less than 1 percent between 2016 and 2017, “[t]his increase reflected a nine percent increase in the number of people experiencing homelessness in unsheltered locations.”²³ This national increase is directly attributable to “[i]ncreases in the numbers of unsheltered individuals in the 50 largest cities.”²⁴

Ultimately, the link between the lack of affordable housing and the rise in homelessness underscores the need for more innovative ways to support increased urban density and affordable housing solutions. As demonstrated in each of the four



Source: The Gap: A Shortage of Affordable Homes (National Low-Income Housing Coalition) 2017

¹⁶ See *id.* at 5.

¹⁷ *Id.* at 3, 27-28.

¹⁸ *Id.* at 28.

¹⁹ *Id.* at 2.

²⁰ National Alliance to End Homelessness, *The State of Homelessness in America* (2017), <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/> (last visited Apr. 29, 2018).

²¹ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *THE 2017 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS* (Dec. 2017), <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>; see also, Paul Boden, *Homeless Head Counts Help No One*, S.F. GATE, (Feb. 5, 2013), <http://www.sfgate.com/opinion/openforum/article/Homeless-head-counts-help-no-one-4254191.php> (“Point-in-time counts are a minimum number, always. They undercount hidden homeless populations because homeless persons are doubling up with the housed or cannot be identified by sight as homeless.”).

²² HUD, *supra* note 21.

²³ *Id.*

²⁴ *Id.*

case study cities, ADUs are an integrative tool that, in concert with existing service structures, can viably target and combat homelessness.

II. Case Studies

This section details four unique and innovative programs promoting and implementing ADU projects. First, Seattle’s “BLOCK Project” is exclusively committed to providing permanent housing alternatives for individuals experiencing homelessness by building ADUs in single-family backyards. In contrast to the BLOCK Project, which focuses on housing single adults, Multnomah County’s “A Place for You” aims to use ADUs to house families facing homelessness. Next, Los Angeles County created the “Second Dwelling Unit Pilot Program” with the explicit goal of promoting ADU development as a tool to house individuals experiencing homelessness. Finally, Denver’s West Denver Renaissance Collaborative Single Family Plus Initiative does not target homelessness, but rather, aims to revitalize the neighborhoods of West Denver by promoting ADU development on single-family lots owned by low-income homeowners. By reviewing the structure, funding, eligibility and matching, and zoning regulations relevant to each project, prospective ADU project managers and homeowners wishing to implement new ADU programs should gain a better understanding of how to create an ADU program that houses individuals experiencing homelessness in their local community.

A. Seattle – BLOCK Project

The BLOCK Project is a community-driven program that calls on Seattle’s community leaders and neighbors to end homelessness by building ADUs to shelter unhoused individuals.²⁵ Among the case studies highlighted in this report, the BLOCK Project is the most developed and demonstrably effective, having housed its first resident in September 2017.

Seattle declared a state of emergency because of the city’s homelessness crisis in November 2015.²⁶ Between 2011-2016, homelessness in Seattle rose by over 20 percent.²⁷ According to Seattle/King County’s 2017 point-in-time count, at least 11,643 people were experiencing homelessness, with 47 percent of those individuals unsheltered.²⁸

THE BLOCK PROJECT AT-A- GLANCE

Management: Non-profit organization

Funding: Crowdfunding

Target population: Single residents

First resident move-in: October 2017

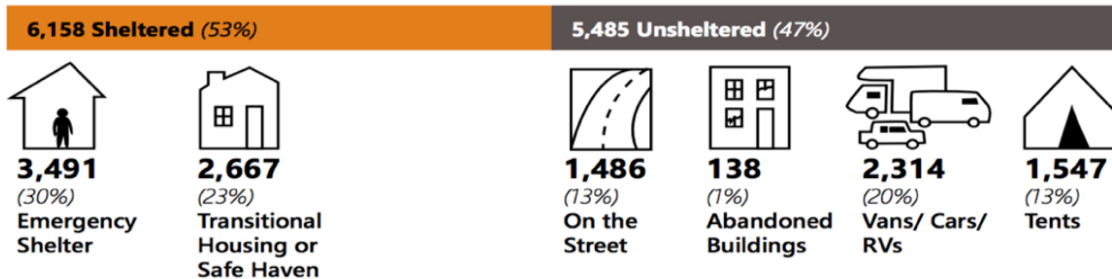
Duration of residency: Lifetime

Goal: 550 units by 2022

²⁵ FACING HOMELESSNESS, *Programs*, <http://www.facinghomelessness.org/programs> (last visited Apr. 5, 2018).

²⁶ Lydia O’Connor, *Seattle Declares State Of Emergency On Homeless Crisis*, HUFFINGTON POST, Mar. 11, 2015, https://www.huffingtonpost.com/entry/seattle-homeless-emergency_us_56392c7fe4b0411d306eb2eb; By declaring a state of emergency, public officials “can suspend payments on certain government services in order to devote money to the declared emergency and pull additional staff in to address the problem . . . act faster in connecting people with behavioral health services and placing them in shelters . . . [and] raise public awareness about homelessness.” J.B. Wogan, *Why Governments Declare a Homeless State of Emergency*, GOVERNING.COM, Nov. 10, 2015, <http://www.governing.com/topics/health-human-services/gov-when-cities-declare-a-homeless-state-of-emergency.html>.

²⁷ Joint Center for Housing Studies of Harvard University, *supra* note 12, at 34.



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The BLOCK Project’s mission is to address Seattle’s community crisis of homelessness and “put a face on homelessness” using ADUs. Rex Hohlbein, an architect and homeless advocate, created the Project in 2016.³⁰ Two organizations collaborated to form the foundation of The BLOCK Project: Facing Homelessness, a non-profit aimed at building community connections and compassion for a grassroots movement towards ending homelessness; and BLOCK Architects, an architecture firm. Facing Homelessness’ mission is to humanize and give homelessness “a face,” using photographs, videos, and internet interaction.³¹ The BLOCK Project builds on this mission by giving individuals experiencing homelessness a place in the community and reflecting their value as neighbors and community members.

The first BLOCK resident, who moved in on September 18, 2017, is still living in the ADU and has given tours to media, potential hosts, and the Mayor of Seattle. As of February 2018, roughly 100 homeowners expressed an interest in serving as BLOCK hosts. Recently, the BLOCK project employed a project manager and plans to build twenty ADUs by 2019.

Structure. To achieve its goals, the BLOCK Project places pre-fabricated ADUs on single-family residential lots. The prefabricated units have full amenities including a sleeping area, kitchen, bathroom, and storage. Further, the BLOCK Project designed the units to operate “off-grid” as a financially and environmentally friendly tool to provide housing for unhoused individuals. The BLOCK Project maintains ownership of the ADU after construction in the host’s backyard.

The legal structure was designed to create clear legal relationships so the personal relationship between the host family and the resident could develop. Facing Homelessness enters a ground lease with the host family that permits it to use a designated portion of the host family’s back yard to install, maintain, and lease a detached ADU together with right to access the unit from the public right of way. The host family has an obligation to disclose existing easements, underground storage tanks, or other issues that may affect successful use of the site, but otherwise has few ongoing obligations under the lease. Both Facing Homelessness and the host family are required to carry insurance with the non-profit policy primary for losses related to the ADU. Defaults under the lease are resolved through a mediated process although each party may terminate the relationship with 60-days’ notice if a

²⁸ All Home, *Seattle/King County Point-In-Time Count Of Persons Experiencing Homelessness: 2017*, 8 (2017), <http://allhomekc.org/wp-content/uploads/2016/11/2017-Count-Us-In-PIT-Comprehensive-Report.pdf>.

²⁹ *Id.*

³⁰ FACING HOMELESSNESS, *History*, <http://www.facinghomelessness.org/about> (last visited Apr. 5, 2018).

³¹ FACING HOMELESSNESS, *supra* note 25.

satisfactory resolution is not achieved. As the owner of the detached ADU, Facing Homelessness bears any tax liability related to the unit.

Under the ground lease, Facing Homelessness retains title to the detached ADU and enters a lease with the resident approved by the host family. The lease includes a set of agreed rules, which the host family and resident customize to fit their situation (*e.g.*, smoking, quiet hours, etc.). Additionally, the lease allows occupancy for a one-year term (with renewal at the election of Facing Homelessness). Currently no rent is due under the tenant lease—just an agreement to adhere to the lease terms, the terms of use negotiated with the host family, and their agreement with the social service agency.

Individual residents are referred to the BLOCK Project by social service agencies that have an ongoing relationship with the residents and an agreement with Facing Homelessness to coordinate any needed social services to the resident. While the BLOCK Project does not interfere with the relationship between the caseworker and the resident, it asks the resident's social worker to meet regularly with the resident and assist if any conflict arises between the resident, the host family, and Facing Homelessness. For the first home, the homeowner, resident and social service agency all retained independent legal counsel to advise on their rights and responsibilities under the legal documents. Facing Homelessness is working on developing a network of attorneys to offer pro-bono representation for future host families, residents and affiliated social service agencies.

Outside of the core relationships between the resident, the host, the BLOCK Project, and the case management agency, the BLOCK Project also partners with construction management professionals, mechanical engineers, landscape architects, and digital marketing firms.³² Further, in the spirit of community building, the BLOCK Project enjoys a dedicated group of volunteers who advocate for the project by spreading the word or by assisting in ADU construction.

Funding. The BLOCK Project funds its work through crowdfunding. "Team leaders" are asked to raise \$35,000 in initial funding, which consists of \$30,000 for building and placing the ADU and \$5,000 to help cover Facing Homelessness' operating expenses.³³ In addition, Facing Homelessness is planning to apply for public and private grants. Even with possible grants, Facing Homelessness views crowdfunding as a crucial ongoing method of fundraising for the organization.³⁴

The BLOCK Project received a generous gift from Turner Construction, a large construction company, in the form of donated materials and general contracting services for the construction of the first four BLOCK units. Multiple subcontractors also donated supplies and labor. Importantly, based on experience from building the first BLOCK unit, project managers reconsidered the involvement of non-professional labor for the construction process in the interest of time, safety, and efficiency.³⁵ As a result, certain materials are pre-fabricated

³² FACING HOMELESSNESS, *The BLOCK Project*, www.the-block-project.com/homelessness/ (last visited Apr. 29, 2018).

³³ Interview with Sara Vander Zanden, Facing Homelessness Managing Director (Feb. 23, 2018).

³⁴ *Id.*

³⁵ *Id.*

because traditional construction is time consuming and requires substantial training for non-professional workers.³⁶

Eligibility & Matching. Homeowners must meet the BLOCK Project’s eligibility criteria, including ownership of a single-family home, three character references, and a commitment to contact neighbors about the BLOCK Project.³⁷ Character references are helpful in determining a prospective host’s fitness for inclusion in the BLOCK Project and whether the host is invested in staying in Seattle permanently. While the ground lease commits the hosts for a five-year period, the BLOCK Project asks for an informal lifetime commitment. As the BLOCK project is primarily about building community and supporting all its stakeholders, Facing Homelessness will work with the needs of individual host families as they arise during the lease term. However, if the homeowner chooses to sell their residence or terminate participation in the program, the BLOCK project will relocate the ADU.

Currently, the BLOCK Project focuses on housing single adults. Before moving into a BLOCK Project home, the potential resident goes through a screening and matchmaking process with the BLOCK Project homeowner. In the initial matchmaking stages, the Project partners with local social service agencies to select potential residents.³⁸ To ensure compatibility, all potential BLOCK Project residents and hosts fill out questionnaires about their interests and comfort level regarding issues such as alcohol use.³⁹ Parties then review each other’s profiles and decide if it is a good fit. While the BLOCK Project is only accepting single residents, there may be variations for families at later stages.⁴⁰

Understanding that conflicts may arise, the BLOCK Project chose a people-first, de-escalation approach. This people-first approach means that the Project directs its messaging towards tackling fears about inviting a stranger into single-family backyards and addressing neighbors’ concerns up front. Early on, the BLOCK Project created positive messaging by having its first host family, Kim and Dan, speak with potential hosts about their success and the benefits of hosting.⁴¹ Moreover, during the site-selection process, the BLOCK Project requires that homeowners discuss BLOCK Project involvement with their neighbors and invite all neighbors to discuss the proposal with Project representatives. If one neighbor objects to the homeowner involvement, the ADU is not built in that particular neighborhood; in other words, the BLOCK Project requires complete consensus and buy-in from the hosting block. Facing Homelessness is also working on building a network of professional mediators and health professionals to help listen to and resolve potential concerns and conflicts. This professional support also reflects the people-based approach to building relationships and support networks for residents, homeowners, and the community at large.⁴²

³⁶ Interview with Sara Vander Zanden, Facing Homelessness Managing Director (Sep. 29, 2017).

³⁷ FACING HOMELESSNESS, *BLOCK Community*, www.the-block-project.com/community/ (last visited Apr. 29, 2018).

³⁸ *Id.*

³⁹ Other triggers may include things like airplane noises for people who suffer from post-traumatic stress disorders for example.

⁴⁰ Interview with Sara Vander Zanden, *supra* note 36.

⁴¹ Interview with Sara Vander Zanden, *supra* note 33.

⁴² Interview with Sara Vander Zanden, *supra* note 36.

Zoning. As with each case study, local zoning laws influence the BLOCK Project unit sizes and potential locations. For ADUs, Seattle’s zoning laws establish, among other requirements, a minimum lot size of 4,000 square feet; minimum lot width of 25 feet; a limit to maximum combined back yard coverage of 40 percent; minimum separation from the primary structure of 5 feet, and maximum height limits.⁴³ Further, Seattle’s Building and Construction Codes establish minimum habitable space requirements for bedrooms of “not less than 70 square feet of floor area size.”⁴⁴ Besides these physical requirements, Seattle’s Code requires an individual who owns at least a fifty percent interest in the property to occupy either the primary residence or the ADU for six or more months of each calendar year as their permanent residence,⁴⁵ and “if unrelated persons occupy either unit, the total number of persons occupying both units may not altogether exceed eight.”⁴⁶

B. Multnomah County – A Place for You

Multnomah County’s A Place for You (“APFY”) initiative is unique in its focus on embedding ADUs into existing social service programs. County officials created APFY to test the effectiveness of housing individuals experiencing homelessness in ADUs in concert with previously established systems of care. In contrast to ADU projects in other cities, APFY concentrates on providing long-term housing for families experiencing homelessness and to counteract the negative impact of housing instability on children.

Portland is the most populated city in Multnomah County.⁴⁷ In October 2015, the Portland City Council declared a state of emergency due to Portland’s affordable housing crisis.⁴⁸ That state of emergency was extended by Portland’s City Council in 2017, and is now in its third year.⁴⁹ A report by Portland State University’s Population Research Center found that the leading causes of the ongoing housing crisis are increases in rental and housing costs, a lack of affordable housing, and stagnant incomes.⁵⁰ In 2016, Portland had the highest rental rate

**A PLACE FOR YOU AT-A-
GLANCE**

Management: Government/non-profit hybrid
Funding: \$500,000 from local government and private philanthropic organizations
Target population: Family residents
First resident move-in: June 2018
Duration of residency: Up to 5 years
Goal: 4 units during initial test phase

⁴³ SEATTLE, WASH., MUN. CODE 23.44.041 Table B.

⁴⁴ *Id.* at 22.206.020(C).

⁴⁵ *Id.* at 23.44.041(C)(1).

⁴⁶ *Id.* at 23.44.041(A)(3).

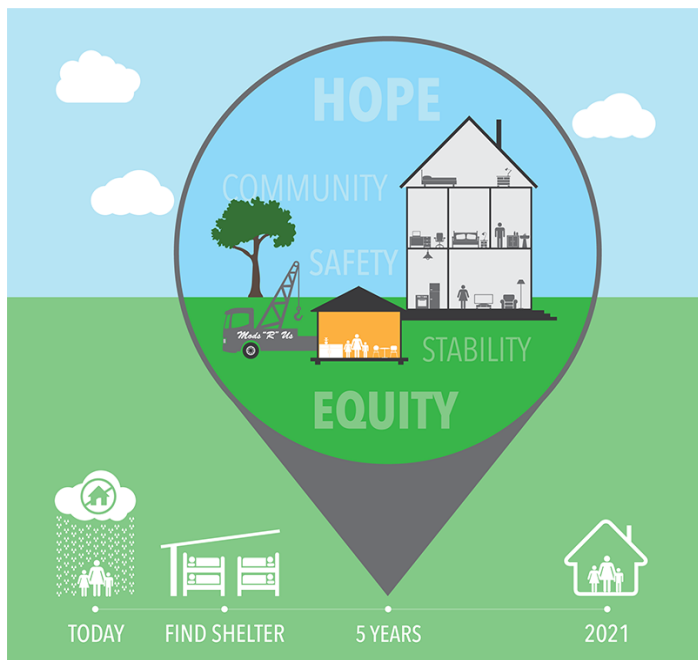
⁴⁷ HASTIE, PARISH, HECK & WHITE, MEMORANDUM RE: MULTNOMAH COUNTY COMMUNITY DEMOGRAPHIC PROFILE, Multnomah County, Oct. 1, 2014, <https://multco.us/file/36649/download>.

⁴⁸ Associated Press, *Portland declares housing emergency*, The Seattle Times, Oct. 8, 2015, <https://www.seattletimes.com/seattle-news/portland-declares-housing-emergency/>.

⁴⁹ Erica Cruz Guevarra, *Portland City Council Extends Housing Emergency, Relocation Assistance*, OPB, Oct. 4, 2017, <https://www.opb.org/news/article/portland-oregon-housing-emergency-homelessness/>.

⁵⁰ PORTLAND STATE UNIVERSITY, 2017 POINT-IN-TIME COUNT OF HOMELESSNESS IN PORTLAND/GRESHAM/MULTNOMAH COUNTY, OREGON, 12 (Oct. 2017), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1040&context=prc_pub.

increase in the country. While rental rates have increased by 63 percent, incomes have only increased by 39 percent.⁵¹ The average worker in Portland making minimum wage⁵² would have to work at least 70 hours a week to afford a two-bedroom apartment.⁵³



Source: Multnomah County and Enhabit Launch Pilot Project “A Place For You”

The County’s 2017 point-in-time count reported 4,177 individuals experiencing homelessness on any given night, a nearly 10 percent increase from the 2015 count.⁵⁴ This number includes the over 300 families who primarily reside in motels and shelters. Portland’s record-high housing shortage prompted the City of Portland and Multnomah County to allocate \$61 million to increase affordable housing in the County.⁵⁵

APFY is a test project spearheaded by the Multnomah Idea Lab (MIL), housed within the Multnomah County Department of Human Services. Enhabit, a local non-profit, is tasked with managing program implementation, overseeing unit

design and installation, selecting sites, and communicating with homeowners.⁵⁶ Following significant media attention in April 2017, the county was forced to close the application page after receiving over 1,100 homeowner applications.⁵⁷

Structure. APFY’s goal is to explore building ADUs on under-utilized space as an alternative strategy to fight homelessness. The program seeks to support families with stable housing and connect them with social services already in place. During the initial phase, four homeowners will be selected to have ADUs built in their backyards to house a family experiencing homelessness. Those families will be required to participate in the program for up

⁵¹ Rebecca Hamilton, *You are here: A snapshot of Portland-area housing costs*, METRO NEWS, (Oct. 25, 2016), <https://www.oregonmetro.gov/news/you-are-here-snapshot-portland-area-housing-costs>.

⁵² OREGON MINIMUM WAGE RATE SUMMARY, OREGON.GOV, <http://www.oregon.gov/boli/whd/omw/pages/minimum-wage-rate-summary.aspx> (last visited Apr. 7, 2018) (As of July 1, 2017, the minimum wage in Portland, OR was \$10.25/ hr.).

⁵³ *Id.*

⁵⁴ PORTLAND STATE UNIVERSITY, *supra* note 50.

⁵⁵ MULTNOMAH COUNTY DEPARTMENT OF COUNTY HUMAN SERVICES, *A Place for You*, <https://multco.us/dchs/a-place-for-you> (last visited Apr. 8, 2018).

⁵⁶ *Id.*; MULTNOMAH COUNTY, *Everything there is to know now about the A Place for You granny flats project*, Mar. 28, 2017, <https://multco.us/multnomah-county/news/everything-there-know-now-about-place-you-granny-flats-project>.

⁵⁷ Molly Harbarger, *Multnomah County idea to get homeowners to host homeless families hits delays*, THE OREGONIAN, Nov. 21, 2017, http://www.oregonlive.com/portland/index.ssf/2017/11/multnomah_county_idea_to_get_h.html.

to five-years. Once a family is referred to the program they are connected with social services provided by A Home for Everyone, an initiative implemented in Portland to help address the city's homelessness crisis, with services including job placement, assistance paying unexpected bills, skills training, and mitigation for potential disputes with homeowners.⁵⁸ Further, homeowners receive tax abatements for the years they are enrolled in the program and have the opportunity to purchase the ADU for its fair market value after five-years.⁵⁹

Program participants will receive one of two pre-fabricated units designed either by Washington-based Wolf Industries (pictured below left) or Portland-based SQFT Studios (pictured below right). Depending on which unit the homeowner receives, construction will take between two and six weeks to have the roughly 300-square-foot ADU move-in ready.⁶⁰



Wolf Industries specializes in factory built, site delivered buildings & ADUs.



288 sq ft (+144 sq ft loft)
12 x 24 ft footprint
Sleeps 3-4
Full bath & kitchen

- 2 weeks on site construction
- Factory built framed construction
- Reduced transport & site related costs
- Reduced materials & handling costs
- Standard processes = improved quality
- Poured concrete foundation
- Ductless heat pump, low cost heat & AC
- Loft storage space

SQFT Studios is a small company 100% focused on ADU construction.



320 sq. ft
16 x 20 ft footprint
Sleeps 3-4
Full bath & kitchen

- 60 days on site construction
- Factory-built 100% Structural Insulated Panel construction for better energy performance, quicker construction & structural integrity
- Designed specifically for APFY requirements
- Pin foundation system reduces cost & reduces site impact
- Ductless heat pump, low cost heat & AC

Funding. APFY received \$500,000 from the Joint Office of Homeless Services and philanthropic organizations, such as the Meyer Memorial Trust.⁶¹ This initial grant, managed by Enhabit, covers all associated costs including design, installation, and program implementation. The pre-fabricated ADUs will cost roughly \$75,000 per unit. Families who reside in the units are expected to contribute 30 percent of their income towards rent, which will go to help pay for maintenance and upkeep costs.⁶²

Eligibility & Matching. In contrast to Seattle's BLOCK Project, which targets single adults, the APFY project aims to provide long-term housing for families experiencing homelessness.

⁵⁸ MULTNOMAH COUNTY, *supra* note 56.

⁵⁹ ENHABIT, *Multnomah County and Enhabit Launch Pilot Project 'A Place For You'*, <https://enhabit.org/adu/> (last visited Apr. 29, 2018); MULTNOMAH COUNTY, *supra* note 55.

⁶⁰ Molly Harbarger, *supra* note 57.

⁶¹ MULTNOMAH COUNTY, *supra* note 56.

⁶² Molly Harbarger, *supra* note 57.

Potential unit occupants are referred by A Home for Everyone’s Homeless Families’ Coordinated Access system.⁶³ Homeowners will be selected based on factors including proximity to services, day care, shopping, transit, and public schools and any prior experience as a landlord.⁶⁴ Homeowners will also complete a questionnaire about the property’s zoning and building codes, including locations of sewer lines and pipes.

Zoning. Portland’s Zoning Code allows for developing ADUs in all R (Residential), C (Commercial), and EX (Central Employment) zone districts, and is one of the most ADU friendly zoning codes.⁶⁵ Physical guidelines for ADUs include that: 1) only one entrance may be on the front of the ADU; 2) no additional parking is required for the ADU; 3) the size of the ADU may not be more than 75 percent of the living area of the primary dwelling unit or 800 square feet of living area, whichever is less; and 4) the ADU must be set back 40 feet from the lot line, or located behind the rear wall of the primary house.⁶⁶ For use restrictions, Portland’s Code requires that “[t]he total number of individuals that reside in both units may not exceed the number that is allowed for a household.”⁶⁷

C. Los Angeles County – Second Dwelling Unit Pilot Program

Like the highlighted programs in Seattle and Multnomah County, Los Angeles County’s Second Dwelling Unit Pilot Program involves building ADUs to house people experiencing homelessness.⁶⁸ L.A. County’s Community Development Commission created the pilot program, which was then approved by the County Board of Supervisors with directives to: (1) develop and produce a Second Dwelling Unit Pilot Program that utilizes ADUs on single-family lots in unincorporated areas of the county; (2) technically assist homeowners implementing the plan; and (3) encourage the County to provide homeowners with incentives for new construction and for preserving existing units, in exchange for long-term affordability covenants or acceptance of Section 8 vouchers.⁶⁹

Los Angeles declared its homelessness crisis a state of emergency in June 2016.⁷⁰ Strikingly, the county’s

SECOND DWELLING UNIT PILOT PROGRAM AT-A- GLANCE

Management: Government

Funding: \$550,000 on-time pilot fund from the County

Target population: Family or single residents

First resident move-in: Unknown

Duration of residency: Unknown

Goal: Construct 2-3 new units and convert 2-3 existing units in 18 months

⁶³ MULTNOMAH COUNTY, *supra* note 56.

⁶⁴ *Id.*

⁶⁵ PORTLAND ZON. CODE 33.205.020.

⁶⁶ *Id.* at 33.205.040(C)(1)-(4).

⁶⁷ *Id.* at 33.205.030(A) (Portland’s Code defines a household as “One or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.”).

⁶⁸ LOS ANGELES COUNTY HOMELESS INITIATIVE, *Approved Strategies to Combat Homelessness*, 116–120 (Feb. 2016), <http://homeless.lacounty.gov/wp-content/uploads/2017/01/HI-Report-Approved2.pdf>.

⁶⁹ *Id.*

⁷⁰ Abby Sewell, *L.A. County supervisors call for a state emergency declaration on homelessness*, L.A. Times, Jun. 14, 2016, <http://www.latimes.com/local/lanow/la-me-ln-homeless-emergency-20160614-snap-story.html>.

homelessness rates rose by 23 percent between 2016 and 2017,⁷¹ with approximately 57,794 individuals experiencing homelessness in 2017.⁷² To address the crisis, the Board of Supervisors approved an action plan of interlocking strategies, including the Second Dwelling Unit Pilot Program aimed at combatting homelessness.⁷³

Structure. The pilot program is fast-tracked: The Board of Supervisors approved the plan on August 15, 2017, with directives to implement the program within eighteen months.⁷⁴ The plan does not specify whether homeowners will be allowed to choose the design of those new ADUs. In addition, the Los Angeles County Arts Commission is organizing an architectural design competition to encourage cost-efficient innovation and “generate momentum and interest for ADUs through engagement events and technical workshops.”⁷⁵ The architectural competition will award \$10,000 to each of the top three design entries.⁷⁶ Winners were scheduled to be announced on April 27, 2018.⁷⁷

Funding. The project received a \$550,000 one-time pilot fund from the County.⁷⁸ From that fund, L.A. County budgeted \$225,000 to provide maximum subsidies of \$75,000 per unit for construction of two to three new ADUs.⁷⁹ Those subsidies will be a forgivable loan tied to a commitment to rent the ADU to an unhoused family, unhoused individual, or individuals at risk of becoming homeless as participants in the housing choice voucher program.⁸⁰ The County also budgeted \$145,000 in subsidies for existing unpermitted ADUs, specifying that it will provide a maximum subsidy of \$50,000 per unit for two to three owners of non-complying units to bring those units up to residential code and use it for the same purposes.⁸¹ Subsidies for permitting and bringing non-complying ADUs up to code will be grants.⁸²

⁷¹ Susan Abram, *What If LA County Paid Residents to House the Homeless? Leaders Are Exploring the Idea*, Los Angeles Daily News, Sep. 5, 2017, <https://www.dailynews.com/2017/08/14/what-if-la-county-paid-residents-to-house-the-homeless-leaders-are-exploring-the-idea/>.

⁷² LOS ANGELES HOMELESS SERVICES AUTHORITY, 2017 GREATER LOS ANGELES HOMELESS COUNT - DATA SUMMARY - TOTAL POINT-IN-TIME HOMELESS POPULATION BY GEOGRAPHIC AREAS, May 30, 2017, <https://www.lahsa.org/documents?id=1354-2017-homeless-count-total-point-in-time-homeless-population-by-geographic-areas.pdf>.

⁷³ LOS ANGELES COUNTY, The Action Plan, <http://homeless.lacounty.gov/the-action-plan/> (last visited Apr. 29, 2018).

⁷⁴ LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, Recommendation to Approve Secondary Dwelling Unit Pilot Project Under Homeless Initiative Strategy F4: Second Dwelling Units Pilot Program, (Aug. 15, 2017), <http://file.lacounty.gov/SDSInter/bos/supdocs/116059.pdf>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ LOS ANGELES COUNTY ARTS COMMISSION, Yes to ADU: Award Event and Exhibition, <https://www.lacountyarts.org/calendar/yes-adu-awards-event-and-exhibition> (last visited Apr. 29, 2018).

⁷⁸ LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, *supra* note 74.

⁷⁹ *Id.*

⁸⁰ LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, Second Dwelling Unit (Accessory Dwelling Unit) Pilot Program, <http://planning.lacounty.gov/secondunitpilot> (last visited Apr. 29, 2018).

⁸¹ LOS ANGELES COUNTY HOMELESS INITIATIVE, *supra* note 68.

⁸² *Id.*

Eligibility & Matching. Officials are screening applicants interested in this pilot project. Only homeowners in unincorporated parts of the county can qualify for the subsidies.⁸³

Zoning. L.A. County is currently updating its ADU ordinances as mandated by recent state laws.⁸⁴ Provisions in L.A. County’s proposed ADU ordinance include: that ADUs are limited to one per lot; that “[b]oth attached and detached ADUs cannot exceed 1,200 square feet.”⁸⁵ For use restrictions, California’s state law requires that ADUs are allowed in zones that allow residential uses with an existing or proposed single-family residence, and that one parking space is required per ADU.⁸⁶

D. *Denver – West Denver Renaissance Collaborative Single Family Plus Initiative*

The mission of the West Denver Renaissance Collaborative (“WDRC”) is to facilitate the equitable revitalization of West Denver by improving the livelihood of existing residents and preserving the rich multicultural character of Denver’s neighborhoods. WDRC’s revitalization efforts include launching a housing program called the Single Family Plus initiative, which encourages homeowner stability by educating homeowners and promoting ADU development. Unlike the other case study cities, this project is not specifically targeted to house individuals experiencing homelessness. Further, the project is still in the planning and fundraising stages, and WDRC has not built any ADUs at this time. Even so, the Single Family Plus initiative’s cost-efficient model, public outreach strategy, homeowner education, and community partnership strategy can serve as a model for future projects in Denver that wish to build ADUs for individuals experiencing homelessness.

WEST DENVER RENAISSANCE
AT-A-GLANCE

Management: Collective impact organization

Funding: Selected lenders will provide guaranteed financing at reduced interest rates for construction of ADUs, and WDRC is seeking grant funding to launch the program until operations are covered by development fees.

Target population: Mid & Low-income residents in West Denver

First resident move-in: No residents at this time

Duration of residency: Unknown

Goal: 250 units over the next five years with 1-5 built in 2018

⁸³ Marc Cota-Robles, *LA County Plan Offers Homeowners Money to Help the Homeless*, ABC7 Los Angeles, Aug. 16, 2017, <http://abc7.com/society/la-county-plan-offers-homeowners-money-to-help-the-homeless/2315929/>.

⁸⁴ LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, *Accessory Dwelling Units*, <http://planning.lacounty.gov/adu/ordinance> (last visited Apr. 29, 2018). The most recent update from Los Angeles County’s Department of Regional Planning indicates that the proposed ordinance was still under consideration as of January 11, 2018. LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, *Accessory Dwelling Unit Ordinance* (Jan. 11, 2018), http://planning.lacounty.gov/assets/upl/case/2017-004091_staff-report-20180124.pdf.

⁸⁵ LOS ANGELES COUNTY, CALIFORNIA, *Proposed Ordinance Amending Title 22 (Planning and Zoning) of the Los Angeles County Code related to accessory dwelling units* (Jan. 24, 2018), http://planning.lacounty.gov/assets/upl/case/2017-004091_attachmentC-20180124.pdf.

⁸⁶ One parking spot per ADU is required unless: “It is located within one-half mile of public transit . . . [i]t is located within an historically significant historic district . . . [i]t is part of the existing primary residence or an existing accessory structure . . . [or] [w]hen there is a car share vehicle located within one block” Kevin J. Keller & Ara Sargsyan, *Interdepartmental Correspondence*, Dec. 30, 2016, <https://planning.lacity.org/documents/Citywide/MemoAB2299.pdf>.

Colorado is one of the least affordable places to live in the country.⁸⁷ In March 2018, the average price of a single-family home in Denver rose above \$500,000 for the first time.⁸⁸ For those that cannot afford to buy, the median rent for a one-bedroom apartment is roughly \$1,380.⁸⁹ Rental vacancy rates in Denver were only 6.8 percent in the third quarter of 2017, leaving roughly 93.2 percent of the rental market occupied.⁹⁰ Meanwhile, local incomes are not keeping pace with these increasing rates.⁹¹ As a result, individuals in Denver who are already experiencing the impacts of poverty are at an increased risk of becoming homeless, remaining homeless, or suffering from chronic homelessness.

According to Metropolitan Denver Homeless Initiative's 2017 Point-in Time Report for the seven-county Denver metropolitan area, of the 5,116 total individuals experiencing homelessness metro-wide, 3,336 individuals experiencing homelessness resided in Denver County.⁹² Most concerning, of those 5,116 individuals experiencing homelessness, 924 individuals were unsheltered and forced to survive the harsh conditions of Colorado's winter without shelter.⁹³

Structure. Based on extensive research of other ADU projects, WDRC created a catalog of five pre-fabricated ADUs. These pre-fabricated units will be designed to conform to zoning regulations in WDRC's target neighborhoods and will be pre-approved by Denver's Planning Office.⁹⁴ Pre-fabrication and pre-approval will limit administrative costs and time, and as a result, WDRC plans to build 250 ADUs over the next five years in eligible neighborhoods.⁹⁵

Funding. Due largely to costs and zoning restrictions associated with ADU development, only 139 ADUs were built in Denver between 2010 and 2017.⁹⁶ WDRC is collaborating with Habitat for Humanity Metro Denver and other non-profit partners to reduce the costs associated with building ADUs. Further, WDRC receives funding for its programs from the City and County of Denver, the Denver Housing Authority, Enterprise Community Partners, and the Denver Foundation.

⁸⁷ Lydia DePillis, *How Colorado became one of the least affordable places to live in the U.S.*, CNN, Nov. 1, 2017, <http://money.cnn.com/2017/11/01/news/economy/colorado-housing-prices/index.html>.

⁸⁸ Lance Hernandez, *Average Denver area home prices break half-million mark for first time*, Mar. 5, 2018, <https://www.thedenverchannel.com/news/local-news/average-denver-area-home-prices-break-half-million-mark-for-first-time>.

⁸⁹ Michael Roberts, *Denver Rent: Highest Priced Neighborhoods in April*, Westword, Apr. 5, 2017, <http://www.westword.com/news/denver-rent-highest-priced-neighborhoods-in-april-2017-8939069>.

⁹⁰ Apartment Association Metro Denver, *Denver Metro Apartment Vacancy and Rent (2017)*, <https://drive.google.com/file/d/oB-vz6H4k4SESZDRESm9aR2ZHYVU/view>.

⁹¹ Michael Roberts, *Why So Many Denver Workers Are Hurting Despite Economic Boom*, Westword, Jun. 28, 2017, <http://www.westword.com/news/denver-workers-hurt-by-high-rent-stagnant-wages-9197536>.

⁹² METRO DENVER HOMELESS INITIATIVE, 2017 Point-In Time Report Seven-County Denver Metro Region, p. 4 (2017), https://d3n8a8pro7v7hmx.cloudfront.net/mdhi/pages/12/attachments/original/1498599733/2017_Metro_Denver_PIT_Final.pdf?1498599733.

⁹³ *Id.*

⁹⁴ Telephone Interview with Renee Martinez-Stone, Director of the West Denver Renaissance Collaborative, Mar. 22, 2018.

⁹⁵ *Id.*

⁹⁶ Erica Meltzer, *Carriage houses and casitas could help fight gentrification on Denver's West Side*, Denverite, Nov. 14, 2017, <https://www.denverite.com/denver-gentrification-carriage-houses-45585/?src=parsely>.

Eligibility & Matching. WDRC focuses on preserving homeownership and autonomy for middle and low-income residents while providing low-cost housing.⁹⁷ Initial homeowners in the program must be below 120 percent of the Area Median Income.⁹⁸ In contrast to the other programs highlighted in this report, homeowners enrolled in the Single Family Plus Initiative oversee both the resident selection process and landlord/tenant relationship.⁹⁹ Importantly, WDRC will provide comprehensive education programs and resources to support and prepare homeowners, including: homeowner education forums, connections to trusted refinance and rehabilitation providers, and an ADU education and development program for qualifying homeowners.¹⁰⁰

Community leaders and program partners in West Denver are currently reviewing the WDRC Single Family Plus initiative. The proposed services and resources, including the ADU pilot program, will roll out as funding becomes available.¹⁰¹

Zoning. Denver’s Zoning Code has only recognized ADUs as a permissible use in certain neighborhoods since 2010.¹⁰² The Code establishes ADU regulations on a district-by-district basis identifiable by zone lot naming conventions.¹⁰³ Using the U-SU-C1 (Urban, single-unit, minimum zone lot area of 5,500 sq. ft.) zoning district as an example, Denver’s Code establishes that ADUs are permitted on all lots in that zone district, and must have height limits of 1.5 stories or 24 feet, bulk requirements, set-back requirements to the rear 35 percent of the zone lot and specific footprint and habitable space requirements based on the total square footage of the whole zone lot.¹⁰⁴ For use restrictions, Denver’s Code establishes basic requirements for ADUs in all zone districts including, but not limited to, prohibiting “[m]obile homes, recreational vehicles, [or] travel trailers,” and must comply with the Denver Building and Fire Code.¹⁰⁵

III. Logistical Considerations

ADU project managers and prospective participants must recognize and address logistical considerations throughout the life of the project. Though not an exhaustive list, this section details some of the logistical decisions that ADU project managers must make when creating and implementing an ADU project. While many considerations are unforeseeable until a project is implemented and may be specific to a location or community, some common considerations include: how the project will be staffed and funded; whether the project will

⁹⁷ *Id.*

⁹⁸ Telephone Interview with Renee Martinez-Stone, *supra* note 94. The Area Median Income is a statistic that is calculated and used to determine various affordable housing metrics. According to the City of Denver, “Anyone you know who earns less than the [AMI] is very likely to be adversely affected by housing costs here.” OFFICE OF ECONOMIC DEVELOPMENT, About Affordable Housing, CITY & COUNTY OF DENVER, <https://www.denvergov.org/content/denvergov/en/denver-office-of-economic-development/housing-neighborhoods/about-affordable-housing.html> (last visited Apr. 29, 2018).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Meltzer, *supra* note 96.

¹⁰³ DENVER ZON. CODE 5.2.2.2(H)

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 11.8.2.1(B).

require the involvement of outside agencies; and how the project will choose and match homeowners and residents.

A. Staffing and Funding

Preliminary decisions about staffing and funding differ depending on whether the project is government sponsored. Government-led project organizers are generally hired or appointed from pre-existing staffing structures. For example, the L.A. County Homeless Initiative designed its Second Dwelling Unit Pilot Project as a joint effort between the Community Development Commission, the Chief Executive Office, and the Department of Public Works. Under models similar to L.A. County's, key staff positions are hired internally from other departments. Government-led ADU projects may, in some circumstances, need to hire new employees to staff various positions. To fund the overall project costs, government-led projects secure financial support through ballot initiatives or existing tax funds.

Non-government led projects will likely need to hire employees or seek volunteers to fill necessary staff positions. Often, these projects are led by a board of directors. For example, Facing Homelessness is overseen by a board of directors, an executive director, community director, BLOCK Project manager, and the founder/creative director.¹⁰⁶ Non-government projects should consider crowdfunding and applying for both public and private grants to pay for program costs. Initially, crowdfunding can provide money for individual ADUs, however, as the project grows in size, it will likely need private and public grants or appropriated government funding to assist with long-term expansion and sustainability.

B. Engagement With Outside Entities

ADU projects often rely on engagement with community members and professional partners. During early stages of development, ADU projects often rely on community members like architects, designers, planners, and construction personnel, to volunteer their time and expertise. These relationships not only reduce costs associated with an ADU project, they also promote the program within the community and develop lasting relationships for the program and participants. In turn, there are also concrete benefits for professional partners, project managers and participants, outside organizations, and other engaged community members, including the social benefit of coming together to achieve the common goal of providing stable housing for individuals experiencing homelessness.

C. Eligibility & Matching Processes

ADU project managers must consider the process for interviewing and matching prospective homeowners with residents. These processes determine both parties' eligibility under program guidelines and general fit within program's goals. For homeowners, eligibility may be contingent on ownership of a single-family home, minimum square-foot requirements, and adequate drainage systems in the backyard. ADU project managers can choose any number of additional eligibility criteria based on individualized interests and goals unique to that particular project. For example, some ADU projects require that neither the homeowner nor the ADU resident have a violent criminal history, and others require the homeowners' lot be located close to public amenities and transportation.

¹⁰⁶ FACING HOMELESSNESS, Our Team, <https://www.facinghomelessness.org/about> (last visited Apr. 29, 2018).

Importantly, when pairing a homeowner and resident, project managers must evaluate the needs of both parties. Given the intimate nature associated with living near the primary home, it is important that the homeowner and resident are comfortable with one another. ADU project managers can help to facilitate amicable relationships by encouraging potential homeowners and residents to communicate and specify additional requirements as part of their ADU agreement, such as limiting alcohol consumption and other concerns.

D. Logistical Takeaways

Governments and organizations wishing to implement an ADU project must consider and plan for various logistical hurdles that will arise throughout the project. In the preliminary stages, ADU project managers must determine how to fund and staff the project, how they plan on engaging with community members and entities to lower costs and build support for the project, and how to determine eligibility requirements and matchmaking processes to create a cohesive fit between the homeowner and the resident. Although many other logistical considerations will arise throughout the project, the above considerations are a good start for getting an ADU project up and running.

ADU Project Logistical Checklist

- Determine how to fund the project.**
 - Crowdfunding and other fundraising efforts.**
 - Public and Private Grants.**
- Determine staffing options.**
 - Identify responsibilities for all paid staff and volunteers.**
 - Identify how many staff members are required to fulfill the project.**
- Engage with community partners and professional entities.**
 - Find local partners willing to donate time, money, or helping hands in furtherance of the project.**
- Determine the target homeowners and residents.**
- Establish a matching/application process for prospective residents.**

IV. Legal Considerations

In addition to the logistical decisions successful ADU programs must identify and make, ADU project managers and interested homeowners must also consider and address relevant legal questions. This section does not aim to analyze each legal consideration in depth, but rather provides a basic overview and identify legal concerns to consider when implementing an ADU project. First, ADU project participants must research and determine whether local zoning laws permit ADUs on the targeted home lot, and identify the physical restrictions pertaining to ADUs in their zone district. Next, ADU project participants should understand the development fees, tax and market value implications, and ownership incentives associated with an ADU addition. Finally, ADU participants must consider the various contractual

relationships and accompanying rights, responsibilities, and liabilities that are likely to arise throughout the life of the project.

A. Zoning Regulations

Before an ADU project commences, interested participants must identify whether local land use regulations allow construction of an ADU on their property. Traditionally, ADU restrictions and requirements are governed by zoning laws promulgated by local governments. As creatures of local enactment, these regulations will vary widely by jurisdiction. Whereas some municipalities have or are considering favorable ADU regulations, project managers and interested participants may face additional procedural hurdles in localities with more stringent regulations. This section gives background on the different zoning practices, outlines general regulations that traditionally govern ADUs, and provides a checklist of zoning considerations when implementing an ADU project.

1. Historical Development and Current Forms of Zoning Regulations

Land use regulations, and zoning laws in particular, were born from increasing complexity associated with growing concentrated urban populations.¹⁰⁷ In 1926, the U.S. Supreme Court in *Euclid v. Ambler* explicitly recognized a local government's ability to regulate private land uses and segregate those uses with zoning laws, noting that "segregation of residential, business and industrial buildings will make it easier to provide fire apparatus . . . increase the safety and security of home life . . . tend to prevent street accidents . . . decrease noise . . . [and] preserve a more favorable environment."¹⁰⁸ In this sense, zoning laws are a tool for local governments to regulate private land use decisions to promote desirable social outcomes, like managing density. The Court in *Euclid* determined that zoning regulations were a valid method of limiting urban density by segregating multi-family from single-family residential districts.¹⁰⁹ For ADU purposes, however, Euclidean zoning regulations do allow for increased urban density by encouraging development of ADUs.

Most local governments across the country still use zoning codes resembling and rooted in the structure of the Euclidian zoning model.¹¹⁰ Consistently, Euclidean zoning codes divide each parcel in the municipality into individual zone lots and designate those lots as residential, commercial, industrial, or mixed Use Districts.¹¹¹ Many codes then divide those four general categories of Use Districts into sub-classifications, with additional unique use restrictions and physical limitations.¹¹² Importantly, "[t]he system of Use Districts is the structural core of Euclidean zoning," and those Use Districts are exclusive and prescriptive.¹¹³ This means that Use Districts are founded in absolute prohibitions that are "applied uniformly in all similar

¹⁰⁷ *Village of Euclid v. Ambler Realty, Co.*, 272 U.S. 365 (1926).

¹⁰⁸ *Id.* at 394.

¹⁰⁹ *Id.*

¹¹⁰ Charles Harr, *Zoning and the American Dream: Promises Still to Keep*, American Planning Association, p. 195 (1990); *Types of Zoning Codes*, re:code LA, Jan. 21, 2014, <https://recode.la/updates/news/types-zoning-codes> (last visited Apr. 29, 2018).

¹¹¹ § 10:2 Euclidean zoning, 1 Rathkopf's *The Law of Zoning and Planning* § 10:2 (4th ed.).

¹¹² *Id.*

¹¹³ Harr, *supra* note 110.

situations without exception.”¹¹⁴ Because cities differ physically and socially, cities that adopt Euclidean zoning codes follow structural similarities of the Euclidean model while adding substantive variations on the types of Use Districts, and physical regulations within those Districts.¹¹⁵

Two other common zoning variations include “Form-based” zoning, and Hybrid zoning. Form-based zoning codes are “based upon a shared vision of the kind of place the community desires, [rather than] separating a community into different use areas.”¹¹⁶ Where form-based codes are similar to traditional zoning in the way they proscribe physical and use restrictions within a community, “[t]hey also regulate things that are not typically part of zoning, such as the design of streets, sidewalks, and other public spaces.”¹¹⁷ These codes provide a more comprehensive and cohesive view of land use regulations by regulating private and public land uses under a common vision.¹¹⁸

Finally, some localities use “hybrid codes” that borrow aspects from multiple forms of land use regulations. Most commonly, hybrid codes utilize elements of Euclidean zoning and form-based zoning. For example, Denver’s Zoning Code follows traditional Euclidean zoning codes by creating identifiable Use Districts. However, like form-based codes, Denver’s Code maintains those Use Districts while placing greater emphasis on directed and detailed physical restrictions based on Denver’s Comprehensive Plan.

By understanding how zoning laws evolve and why they exist, one also gains a better understanding of why ADU regulations exist in their forms. Although ADU project managers and prospective participants need not be familiar with the intricacies of zoning laws, the form and substance of land use laws in a locality will govern whether and how an ADU can be constructed.

2. *Common ADU Regulations and Restrictions*

While the substance of ADU regulations varies widely across jurisdictions, some common trends emerge. Generally, Use Districts will delineate both primary and secondary uses for a lot. ADUs are typically only permitted in residential Use Districts. Considering residential Use Districts are the most exclusive, an ADU can only be built on a residential lot when it is expressly permitted as a primary or secondary use. Other use restrictions may include occupancy, familial relationship, and parking requirements.¹¹⁹ For physical regulations, land use laws typically govern height and bulk restrictions, setback requirements, lot coverage, and minimum space for habitation.¹²⁰ These regulations will substantially impact the building form of an ADU and the location of the ADU on the home lot. Where some jurisdictions outline ADU requirements independently and thoroughly, others do not contain specific ADU requirements or rely instead on regulatory mechanisms outside the zoning code. Ultimately, the first step of

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Mary Madden & Joel Russell, *Part 1: What Is a Form-Based Code?*, *Planners Web*, Dec. 5, 2014, <http://plannersweb.com/2014/12/fbc1/>.

¹¹⁷ *Id.*

¹¹⁸ *See id.*

¹¹⁹ *See e.g.*, SEATTLE MUN. CODE 23.44.041(C)(1).

¹²⁰ *Id.*

an ADU project is to read and understand the zoning code and other applicable land use regulations.

3. Zoning Checklist: Identify Your Zone District

To find the applicable zone district for any given lot, one should first find a city's zoning map on the internet by using key words such as the name of your city and "zoning map." For Seattle, Multnomah County, Los Angeles, and Denver, zoning maps are readily accessible on the various city or county websites.¹²¹ Next, enter or look-up a specific address within each zoning map platform. Zoning maps are typically color coded with a key identifying particular colors for various zone districts. The applicable zone district will likely appear in as a series of three to four letters separated by hyphens and may contain a number at the end. For example, an urban single unit zone may appear as "U-SU-C1."

4. Zoning Checklist: Identify Applicable Regulations

After identifying the applicable zone district, find your local zoning code by using search terms: your city and "zoning code." Within the zoning code, use the index or table of contents to find the code section addressing your zone district. Zoning codes are often hundreds of pages long, so the index is a useful tool for finding the applicable regulations. Once you have found the section relating to your zone district, read through the code sections to determine whether ADUs are a permitted use. If ADUs are permitted, you will also find physical restrictions for ADUs in the same place. If that section does not contain regulations on ADUs, your code may contain a separate and independent section governing ADUs. Again, refer to the index to determine if there is an independent section on ADUs.

5. Zoning Checklist: My Zone District Permits ADUs

If ADUs are permitted on your property, the next step is to contact the local planning office and speak with a planner about permitting and other procedural requirements. Generally, the local planning office must review and approve building plans for the ADU to ensure that the structure meets the physical requirements of the zoning district. Permitting processes may also include additional procedural hurdles like public hearings. Sometimes, the permitting process can be time consuming and expensive. In localities that have not tried to make ADU development more affordable, ADU project managers should work to curtail or minimize these costs for prospective homeowners.

6. Zoning Checklist: My Zone District Does Not Permit ADUs

Although it is unlikely, an ADU project may still be viable if the zoning code indicates that ADUs are not permitted on the targeted property. Prospective homeowners can file what is commonly called a "map amendment," which is the procedure and process that homeowners use to change their zoning district. By filing a map amendment, a prospective homeowner may change their zone district from one that does not permit ADUs to one that does. Although this may sound simple, map amendments are highly uncommon on residential lots, are tedious, time consuming, and expensive, and do not have a high likelihood of approval. Zoning codes

¹²¹ Seattle - <http://www.seattle.gov/dpd/Research/gis/webplots/smallzonemap.pdf>; Multnomah County - <http://www4.multco.us/lup/>; Los Angeles - <http://zimas.lacity.org/>; Denver - <https://www.denvergov.org/Maps/map/zoning>.

lay out the process and timeline associated with map amendments, and planning department websites may contain graphic timelines explaining the process.

Although not a short-term solution, ADU project managers and prospective homeowners should consider campaigning or petitioning their local government to adopt ADU regulations that encourage ADU development and permit ADUs on a greater number of lots in a municipality. In places like Portland, which permits ADUs in all residential and commercial zone districts, ADU projects housing individuals experiencing homelessness will likely be more successful and easier to implement.

7. Zoning Takeaways

Variations in ADU regulations highlight the localized nature of land use and zoning laws. Where the general character of physical and use restrictions is largely similar, local differences require ADU project managers to research and know ADU regulations prior to undertaking a project. Importantly, zoning regulations will determine whether an ADU can be built on a homeowner's lot at all, and if it is permitted, those regulations will set specific physical restrictions that will dictate the dimensions of the ADU. In many cities, local governments recognizing the benefit of ADUs to combat affordable housing and homelessness are amending or passing new laws to encourage ADU construction.¹²² Until generous ADU regulations take hold everywhere, project developers may continue to face additional zoning hurdles to further ADU projects.

ADU Project Zoning Checklist

- Google "your city" + zoning map.
 - Search for your address.
- Find your zoning code.
 - Google "your city" + zoning code.
 - Find your zone district.
- Find ADU Regulations for your zone district.
 - Using the code, find ADU regulations for your zone district.
- Does your zone district allow ADUs? If yes...
 - Contact a planner to discuss ADU permitting process. Contact info for the planning can be found with zoning code.
- If your zone district doesn't allow for ADUs...
 - Contact a planner and experienced land use attorney to discuss your options.

¹²² Mimi Kirk, *The Granny Flats Are Coming*, CITYLAB, Jan. 16, 2018, <https://www.citylab.com/design/2018/01/the-granny-flats-are-coming/550388/>; Laura Bliss, *Portland's 'Granny Flats' Get an Affordable Boost*, CITYLAB, Mar. 12, 2018, <https://www.citylab.com/equity/2018/03/portlands-granny-flats-get-an-affordable-boost/555083/>.

B. Initial Financial Considerations

Interested program managers and participants should also consider the initial financial obligations and impacts of an ADU project. These considerations include, but are not limited to, the extensive development permit process and fees, which are required for ADU construction in most jurisdictions, the tax implications associated with increased living space, and examples of potential incentives for property owners, which could offset some of the financial obligations, such as fee waivers, tax abatement, and increased home market value. This section provides a brief overview of these financial considerations and a checklist for interested homeowners and project managers to use as a reference.

1. Development Permits and Fees

ADU project managers and homeowners must receive zoning and building permits prior to and throughout the construction process. To do so, ADU developers must acquire and provide extensive documentation, such as: a zoning review; wastewater and sewage permits; air-conditioning and gas pipe permits; plumbing permits; electrical permits; roofing permits; and right of way construction permits, among others.¹²³ Further, municipalities may also require other review processes, such as requiring the homeowner to notify adjacent neighbors of the proposed ADU construction by certified mail.¹²⁴

In addition to receiving necessary permits, many municipalities impose fees, sometimes called System Development Fees, which ADU developers and owners must pay to hook the ADU up to sewer, water, and other municipal services. Permits and review processes require independent inspections, which increases the costs of ADU development.



¹²³ See e.g., DENVER DEVELOPMENT SERVICES, *Project Guide for Detached Dwelling Units*, CITY & COUNTY OF DENVER, <https://www.denvergov.org/content/denvergov/en/denver-development-services/home-projects/building-expanding-a-home/detached-dwelling-carriage-house.html> (last visited Apr. 29, 2018).

¹²⁴ *Id.*

¹²⁵ PORTLAND BUREAU OF DEVELOPMENT SERVICES, *Development Services: From Concept to Construction*, <https://www.portlandoregon.gov/bds/35891> (last visited on Apr. 29, 2018).

ADU project managers should plan for the administrative burdens and costs associated with development permits and fees. For example, the WDRC plans on providing five pre-fabricated ADUs that will be pre-permitted with the City of Denver. The BLOCK project's off-grid ADU design will likely limit System Development Fees, like those for sewer and water. Finally, cities wishing to encourage ADU development may waive permitting fees and processes for ADU development. For example, in Portland, ADUs were historically untenable by high fees including at least \$10,000 in Systems Development Charges.¹²⁶ However, in 2010, the local government reduced municipal fees and adjusted its zoning codes to make it easier for homeowners to add ADUs.¹²⁷

2. Tax Implications

Homeowners should also research potential tax implications when considering the addition of an ADU to their property. Unfortunately, there is no "one-size fits all" model for assessing potential tax implications because taxes associated with ADUs depend on many factors, including the specific jurisdiction and the nature and purpose of the add-on. Most state and local tax authorities calculate property taxes based on the value of the homes within their areas.¹²⁸ Because all property taxes are state imposed, there is also little uniformity in how those property taxes are assessed, and jurisdictions include different types of property in their tax assessment. In some states, personal property taxes apply to all tangible property that produces income, such as the furniture inside rental homes.¹²⁹

Generally, any addition (attached or detached) that increases the total living space on the property will cause an increase to property taxes. Conversely, if the ADU is the result of converted existing space (e.g., a finished basement), property taxes will not likely increase without an increase to total living space.¹³⁰ Remember, several factors impact property values and taxes, including the type of ADU, its amenities, the property's location, the current housing market, and whether the ADU triggers a reassessment of the property.¹³¹ Even if a reassessment of the property value is not required, homeowners can still expect to pay increased property taxes, especially if the ADU provides any additional income from rent.¹³²

¹²⁶ PORTLAND BUREAU OF DEVELOPMENT SERVICES, System Development Charges (SDCs), <https://www.portlandoregon.gov/bds/article/166412> (last visited Apr. 29, 2018).

¹²⁷ PORTLAND BUREAU OF DEVELOPMENT SERVICES, Waiver of System Development Charges (SDC) for Accessory Dwelling Units (ADU) Extended until July 2018, <https://www.portlandoregon.gov/bds/article/575523> (last visited Apr. 29, 2018).

¹²⁸ Martin John Brown, *How do ADUs affect property values?*, ACCESSORY DWELLINGS, Jul. 2, 2014, <https://accessorydwellings.org/2014/07/02/how-do-adus-affect-property-values/> (last visited Apr. 29, 2018).

¹²⁹ Intuit TurboTax, *What Are Personal Property Taxes?*, <https://turbotax.intuit.com/tax-tips/home-ownership/what-are-personal-property-taxes/L2KFeovaB> (last visited Apr. 29, 2018).

¹³⁰ A Regional Coalition for Housing, *Renting Out An ADU*, <http://www.archhousing.org/current-residents/adu-renting-out.html> (last visited Apr. 29, 2018).

¹³¹ Brian Martucci, *What Is an Accessory Dwelling Unit (Granny Flat) – ADU Costs & Benefits*, Money Crashers, <https://www.moneycrashers.com/accessory-dwelling-unit-granny-flat-costs/> (last visited Apr. 29, 2018).

¹³² Red Oak Realty, *Home Truths: Should you add an Accessory Dwelling Unit to your home?*, BERKELEYSIDE, Feb. 8, 2017, <http://www.berkeleyside.com/2017/02/08/home-truths-add-accessory-dwelling-unit-home/>; Martin John Brown, *How appraisals and "GSEs" make financing an ADU challenging*, ACCESSORY DWELLINGS, Nov. 21, 2011,

The good news for homeowners is that state and local property taxes for both personal property and owned real estate, including construction costs, inspection fees, and payments made to contractors, have traditionally been deductible from federal income taxes.¹³³ Governments in some jurisdictions may even abate any increased taxes associated with the ADU if the homeowner agrees to house low-income residents in the unit.¹³⁴ However, the recently passed Tax Cuts and Jobs Act limits state and local tax deductions to \$10,000 for both individuals and couples.¹³⁵

3. *Property Owner Incentives*

The costs and taxes associated with ADU construction are mitigated, in part, by incentives offered to property owners for participating in ADU projects. Incentives range from fee waivers, access to low-interest loans, government subsidies covering the cost of construction, to complete ownership of the ADU.

ADU ownership may be the most effective incentive for homeowners to share their backyard. For government-led projects ADU ownership is one of the main incentives offered to homeowners for joining the program. For Multnomah County participants, homeowners can purchase the ADU at fair market value upon completion of the five-year commitment.

Property owners may also benefit from an increase in their home's market value. Real estate values are derived from the structures on the land, comparable real estate prices in the area, supply and demand trends in the local economy, whether there are any restrictions or covenants that run with the land, and other factors.¹³⁶ Home value is determined by features such as square footage, number of rooms, presence of amenities like pools or garages, upgrades, and the potential for significant rental income.¹³⁷ One study found that ADUs contributed, on average, between 25 percent and 34 percent of each property's assessed value and that adding an ADU to a single-unit property "could reasonably add 51 percent to longer-term measures of value or return."¹³⁸

4. *Takeaways*

Homeowners considering the addition of an ADU to their property must understand the development permit process and fees, associated tax implications, and potential property

<https://accessorydwellings.org/2011/11/21/appraisals-and-gses-critical-issues-in-adu-financing-and-development/>.

¹³³ Intuit TurboTax, *I'm going to build an ADU on my rental property*, <https://ttlc.intuit.com/questions/3997143-i-m-going-to-build-an-adu-accessory-dwelling-unit-on-my-rental-property-it-will-be-a-detached-separated-unit-how-do-i-deduct-the-costs-of-construction> (last visited Apr. 29, 2018).

¹³⁴ MULTNOMAH COUNTY DEPARTMENT OF COUNTY HUMAN SERVICES, *supra* note 55.

¹³⁵ Samantha Sharf, *How The New Tax Law Will Impact Your Housing Costs*, FORBES, Jan. 9, 2018.

<https://www.forbes.com/sites/samanthasharf/2018/01/09/what-in-the-final-tax-bill-could-impact-your-housing-costs/>.

¹³⁶ Anna Johansson, *6 factors that influence a home's value*, INMAN, Aug. 7, 2017,

<https://www.inman.com/2017/08/07/6-factors-that-influence-a-homes-value/>.

¹³⁷ *Id.*

¹³⁸ Martin John Brown & Taylor Watkins, *Understanding and Appraising Properties with Accessory Dwelling Units*, *The Appraisal Journal* (2012),

<https://accessorydwellings.files.wordpress.com/2012/12/appraisingpropertieswithadusbrownewatkinsnov2012.pdf>

owner incentives, such as the effect on a home's market value. Real and personal property taxes are calculated by jurisdiction, so it is imperative that the homeowner check with a tax specialist or with their local tax office. Even if a reassessment is not automatically triggered, the homeowner is still likely to see an increase to the owner's annual property taxes. Property owners may be able to deduct increased property taxes and expenses associated with the ADU construction from their federal tax returns.¹³⁹ Many community or government sponsored ADU projects offer incentives for homeowners including ownership of the ADU, fee waivers, access to low-interest loans, government subsidies covering the cost of construction, and even tax abatement.

ADU Project Initial Financial Considerations Checklist

- Identify development permits required in your municipality and fees associated with those permits.
 - To do this, contact your local municipality's planning department either over the phone or in-person.
- Determine if the ADU increases living space.
- Determine if ADU will trigger an assessment.
 - If it does, contact your local County Tax Assessor's Office or Tax Collector's Office and request a "reassessment request" form.
 - Alternatively, contact a tax consultant to reassess the home.
- Find out how your jurisdiction calculates property taxes.
 - Google "estimated property taxes" or "property tax calculator."
 - Enter relevant information (e.g., zip code, assessed home value, median home value in neighborhood.)
- Determine potential property owner incentives, such as any tax deductions, permit fee waivers, or increases to the home's market value.
 - Contact local tax authority or consult a tax attorney.

C. Contractual Relationships

Another key consideration for ADU projects is the contractual relationships formed throughout the project. Parties should consult an attorney, preferably one who specializes in real estate and land use law, because contractual relationships will differ in duration and

¹³⁹ The recently passed Tax Cuts and Jobs Act limits the deductions available for state and local property, sales, and income taxes to \$10,000 for both individuals and married couples. Samantha Sharf, *How The New Tax Law Will Impact Your Housing Costs*, FORBES, Jan. 9, 2018, <https://www.forbes.com/sites/samanthasharf/2018/01/09/what-in-the-final-tax-bill-could-impact-your-housing-costs/>.

complexity based on the unique set of associated responsibilities, rights, and liabilities. To determine which relationships are created, all parties involved in the design, creation, and occupancy of the ADU must be identified. Potential parties include, but are not limited to: the leasing party, unit occupant, ADU owner, land/property owner, project sponsor, project manager, contractors, and social service agencies. ADU projects may not involve each of these parties, and many parties can have overlapping roles. For instance, the relationship between the project sponsor and contractors might only exist during the construction period, but the duration of the contractual relationship between the homeowner and unit occupant will vary depending on the specific structure of the project. As an example, Multnomah County's APFY project has a five-year limit for family occupants, while Seattle's BLOCK Project specifies a five-year period but with a potential for renewal.

1. *Types of Contractual Relationships*

The most common contractual relationships that arise in the context of property rentals are the landlord-tenant and lessor-lessee relationships. With ADUs, the homeowner is not always the *unit* owner. For example, Seattle's BLOCK Project remains the legal owner of the ADU, even after construction of the unit is complete; the unit occupant leases directly from the partnering non-profit, Facing Homelessness. The BLOCK Project addresses the relationship between the unit occupant and homeowner through the terms of a "use attachment" within the lease. In Multnomah County, the non-profit Enhabit, which oversees the design and installation of the ADUs, leases the unit to the homeowners *and* the unit occupants. After five years in the program, the homeowner will gain legal ownership of the unit, and only then would they become the lessor or landlord. In contrast, L.A. County's Second Dwelling Unit Pilot project will establish a landlord-tenant relationship between homeowners and unit occupants. These distinctions are important, and project managers, unit occupants, and homeowners should identify the key differences because they impact which laws govern the ADU projects.

a. *Lessor-Lessee*

As the name suggests, the lessor-lessee relationship forms when the legal owner of property leases the use of that property to another party, the lessee. This contractual relationship has significant impacts on the rights and responsibilities assigned to each party. Generally, the lessor has fewer obligations to the lessee than a landlord would. For example, the lessor has a duty to repair any *existing* damages to the property but, unlike a landlord, has no continuing duty to maintain the property after the lessee has moved in.¹⁴⁰ Even though a lease typically offers fewer rights, it also offers increased stability because it is generally longer in duration and cannot be altered month-to-month, even if the market experiences a spike in rental rates.¹⁴¹

¹⁴⁰ LawShelf Educational Media, *Lessors*, <https://lawshelf.com/courseware/entry/lessors> (last visited Apr. 29, 2018).

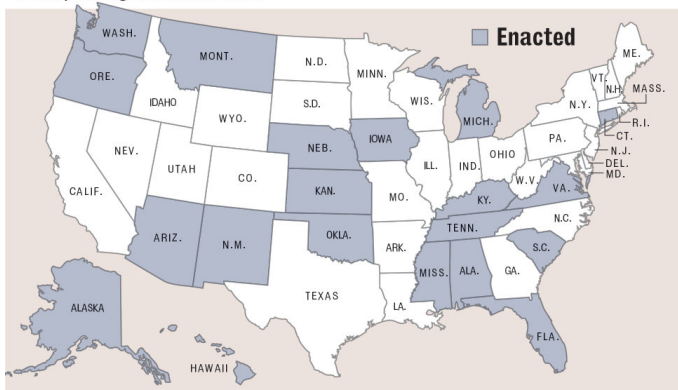
¹⁴¹ LegalNature, *Lease Agreement vs. Rental Agreement*, <http://help.legalnature.com/41891-articles/lease-agreement-vs-rental-agreement> (last visited Apr. 29, 2018).

b. Landlord-Tenant

Landlord-Tenant laws are governed by state, local, and municipal ordinances, which typically govern health and safety standards, noise and nuisance regulations, and antidiscrimination laws.¹⁴² Although the laws vary by jurisdiction, many states have modeled their landlord-tenant laws after the Uniform Residential Landlord and Tenant Act (URLTA).¹⁴³ Guidelines in URLTA include standards for adherence to building and housing codes, property maintenance to ensure safe and habitable conditions, which include electrical, heating, cooling, and plumbing facilities, trash disposal, and tenant rights, such as the right to quiet enjoyment of the property. It is important to understand the general guidelines for landlord-tenant law and make necessary modifications to comply with specific state statutes.

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

1. Requires landlords to meet minimum housing standards.
2. Prohibits leases that force tenants to waive their legal rights or imposes onerous fines.
3. Includes stiff penalties for landlords who unlawfully refuse to return security deposits.
4. Prohibits retaliatory action against tenants, such as turning off their utilities if they file a complaint against the landlord.



Landlord rights generally include the right of entry, ending a tenancy for nonpayment of rent, material violations of lease, or illegal conduct. Landlord responsibilities include the duty to repair and maintain the premises, return deposit, and provide safe and secure housing to the tenant. Tenant rights generally include the right to safe and habitable conditions, the right to have repairs and maintenance requests be resolved in a timely manner, the right of quiet enjoyment of the premises, the right of privacy and safety, and the right to withhold rent if landlord fails to adhere to duties.¹⁴⁴ Besides rights and responsibilities mandated by statute, leases and rental agreements can be tailored to meet the needs of the parties involved, which is why it is crucial to consult an attorney who specializes in property law.

2. Potential Liabilities

Regardless of the contractual relationships formed, all parties should be aware of all potential liabilities. Landowners, landlords, and lessors have a special duty of care to tenants, lessees, and even to individuals invited onto the property for business or social purposes. Most states have "Premises Liability" statutes that determine a landowner's duty of care in a specific jurisdiction. Landowners (or the party legally responsible for maintaining the condition of the premises) can generally be held liable for injuries resulting from dangerous conditions if the

¹⁴² To find applicable local laws visit these pages: <http://www.statelocalgov.net/>; <http://www.municode.com/>.

¹⁴³ NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, *Revised Uniform Residential Landlord and Tenant Act* (2015), http://www.uniformlaws.org/shared/docs/residential%20landlord%20and%20tenant/RURLTA%202015_Final%20Act_2017mar30.pdf (last visited Apr. 29, 2018).

¹⁴⁴ NOLO.com, *Renters' & Tenants' Rights*, <https://www.nolo.com/legal-encyclopedia/renters-rights> (last visited Apr. 29, 2018).

condition resulted from negligence, failure to disclose the danger, or a failure to protect against dangers of which the landowner actually knew or should have known about.¹⁴⁵

Landlords have a higher duty of care because they are responsible for maintaining a safe, habitable, and hazard-free property. Further, landlords can be held liable for injuries to tenants, criminal activity on the premises, environmental hazards, injuries resulting from a tenant's animal, or failure to adhere to the tenant's right to quiet enjoyment and habitability.¹⁴⁶ To ameliorate these liabilities, landlords can, and should, invest in landowner-occupant homeowners' insurance and hybrid policies for an owner-occupied rental property. There are also rare exceptions when a tenant's conduct will assume liability, for example if a tenant refuses to allow the landlord entry, the tenant assumes all liability for damages and repairs to the rental unit, and consequential damage to other units.

As with any contractual relationship, there are associated consequences for breaching, or violating, the contract.¹⁴⁷ Landlords generally have a duty to mitigate damages if the lease is terminated early and tenants may be able to sue for any financial damages incurred because of an illegal eviction.¹⁴⁸ If tenants break the lease or rental agreement, they are generally obligated to fulfill for the duration of the lease and could have to pay the rent for the remaining months on the lease or cover expenses that the landlord has associated with re-renting (e.g., advertising expenditures). A tenant's credit report could also be negatively affected.¹⁴⁹

3. Takeaways

All parties considering involvement in an ADU project should consult an attorney due to the complex nature of the contractual rights and responsibilities that may arise throughout the life of the project. Lessor-lessee and landlord-tenant laws are derived from both federal and local law, and the parties involved should contact an attorney with knowledge of those contractual relationships in the specific jurisdiction where an ADU project is to be implemented. Further, ADU project participants should be made aware that all terms of program involvement are specified in contracts between the program or organization, homeowner, and resident. As new contractual relationships arise throughout the life of the project, participating parties should maintain awareness of relevant contract laws and contact an attorney with questions.

¹⁴⁵ FINDLAW.com, *Premises Liability: Who Is Responsible?* <http://injury.findlaw.com/accident-injury-law/premises-liability-who-is-responsible.html> (last visited Apr. 29, 2018).

¹⁴⁶ NOLO.com, *Landlord Liability*, <https://www.nolo.com/legal-encyclopedia/landlord-liability> (last visited Apr. 29, 2018).

¹⁴⁷ Marcia Stewart, *Breaking a Lease and Leaving Early*, NOLO.com, <https://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter9-5.html> (last visited Apr. 29, 2018).

¹⁴⁸ Van Thompson, *Consequences of Landlords Breaking a Lease Agreement*, S.F. GATE, <http://homeguides.sfgate.com/consequences-landlords-breaking-lease-agreement-49165.html> (last visited Apr. 29, 2018); Marcia Stewart, *How Evictions Work: What Renters Need to Know*, NOLO.com, <https://www.nolo.com/legal-encyclopedia/evictions-renters-tenants-rights-29824.html> (last visited Apr. 29, 2018).

¹⁴⁹ Christy Rakoczy, *How to break a lease: Pros and cons of breaking your rental contract – and tenants legal rights*, MIC.COM, Jul. 14, 2017, <https://mic.com/articles/182068/break-a-lease-the-smart-way-pros-and-cons-of-breaking-your-contract-and-tenants-legal-rights#.JNSWyUkqB>.

ADU Project Contractual Relationship Checklist

- Identify all parties.
- Determine who has legal ownership of the ADU.
- Determine which party is taking on responsibilities of landlord (e.g., repairs and maintenance and guaranteeing warranty of habitability.)
- Discuss what happens in case of breach; how do parties want worst-case scenario to be resolved?
- Consult attorneys to ensure all parties understand the clauses and legal ramifications of each contract.

V. Media and Messaging

Community support is crucial for the success of any new social enterprise. For ADU projects housing people experiencing homelessness in established neighborhoods, advocates must be mindful of their messaging. Like the integrative approach that ADU projects take to house individuals experiencing homelessness, ADU project managers should construct an integrative message that frames homelessness not as externality to the general community, but part of it. According to Rex Hohlbein from Facing Homelessness, homeless advocates can do this by refraining from calling the situation of unhoused individuals as a “homelessness crisis,” and instead refer to it as a “community crisis.”¹⁵⁰ This type of messaging contributes to integrating individuals experiencing homelessness into the community rather than segregating them into a separate classification—replicating the precise goal of these ADU projects.

Communities learn about ADU projects from multiple media sources, including media campaigns, news articles, social media, and websites. ADU projects should be thoughtful and strategic about the messaging of their work from the start and throughout the life of their projects. This section explores lessons learned about effectively messaging for ADUs and briefly summarizes messaging principles that ADU advocates should consider when creating strategic messaging for an ADU project including: identifying the target audience; crafting a digestible message; conveying added value; and choosing the optimal message medium. For further learning about strategic messaging, the sources cited in this section should provide a good starting point.

A. *Identify the Target Audience and the “Frame”*

ADU project messaging framework should consider: (1) the core customers—*i.e.*, people who are unhoused and homeowners; (2) partners—*i.e.*, community partners and governmental agencies; and (3) internal stakeholders—*i.e.*, the ADU initiative organizers and block members.

Facing Homelessness, for example, provides three message frames to inspire different audiences: “Use Your Passion & Skills,” “Begin Your Journey,” and “Stories from the

¹⁵⁰ Interview with Rex Hohlbein, Facing Homelessness, April 14, 2018.

Community.”¹⁵¹ Ultimately, audiences develop preferences based on the presented options.¹⁵² A well-crafted frame can help a homeowner see ADU construction as a viable method of retirement planning. For example, Miguel Ramirez, 49, a longtime resident of Denver’s Westwood neighborhood, bought a house six years ago.¹⁵³ He has kept tabs on WDRC since attending an information session. As Mr. Ramirez plans for retirement, he is eager to build an ADU that could provide extra income as a rental. As his property valuation has increased 40 percent, he says that the program “couldn’t happen at a better time for me . . . I’m hitting 50, and I’m looking at maybe my last five to seven years of working. If this happens, that will very much be my retirement.”¹⁵⁴

B. Craft a Digestible Message

After building frames for target audiences, advocates must compose simple and succinct messages to explain the goals of the project to each target audience. The **Message Size Table** provides examples of successful messages created by Facing Homelessness that succinctly convey meaning to target audiences.¹⁵⁵ Each message succeeds because it is digestible and memorable for its target audience.

RECEIVERS	SIZE	MESSAGE	WHAT THE MESSAGE CONVEYS
COMMUNITY MEMBERS	±3 Words	“Just Say Hello”	Homeless persons are not invisible, and you can make a difference.
DONORS & COMMUNITY MEMBERS	±9 Words	“100 percent of your donations go to someone living outside”	We will not waste your donation.
STAKEHOLDERS & PARTNERS (AND SOME DONORS)	±25 Words	“The power in humanizing homelessness is that it allows all of us to see the beauty of each person living on our streets.”	You want to know more about how to be a part of this. You want to be a part of this.
PRESS RELEASE (AND SOME PARTNERS & STAKEHOLDERS)	50+ Words	“Executive Constantine announces new partnerships to bring housing and hope to those leaving Homelessness” ¹⁵⁶	Updates the community.

¹⁵¹ FACING HOMELESSNESS, Get Involved, On Behalf of Seattle's Homeless We Rise Together, <https://www.facinghomelessness.org/get-involved/> (last visited Apr. 29, 2018).

¹⁵² See Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, *Econometrica* Vol. 47 No. 2, 263-292 (1979).

¹⁵³ Meltzer, *supra* note 96.

¹⁵⁴ *Id.*

¹⁵⁵ FACING HOMELESSNESS, *supra* note 152.

¹⁵⁶ Dow Constantine, *Executive Constantine announces new partnerships to bring housing and hope to those leaving homelessness*, KING COUNTY, WA, Mar. 2, 2018, <https://www.kingcounty.gov/elected/executive/constantine/news/release/2018/March/02-warehouse-homelessness-projects.aspx>.

C. Convey Value Added

ADU project messages should convey a value proposition or “a clear, simple statement of the benefits, both tangible and intangible” that an ADU project will bring to its participants.¹⁵⁷ ADU advocates should consider local needs and potential opposition when building a strategic message about how ADUs add value to an individual or community. Some examples of value propositions for ADUs include:

- ADU initiatives can promote an unhoused individual’s ability to obtain the material resources necessary for full social and political participation;
- ADU programs increase the supply of affordable housing;
- ADU projects can address housing issues in space-efficient and environmentally-friendly manners;
- ADUs can increase the market value of homeowners’ properties

D. Choosing the Best Message Medium

There are five primary forms of communication: intrapersonal, interpersonal, group, public, and mass communication.¹⁵⁸ Advocates should consider how they can use multiple forms of communication to reach target audiences.

Programs that build ADUs to house individuals experiencing homelessness may face opposition in certain communities. Project proponents must assess localized issues and concerns as they arise. Commonly stated concerns include threats to the economic stability of single-family neighborhoods and neighborhood safety in the community. In these cases, project managers should stay engaged and address these concerns directly by providing a clear, consistent message: communities benefit from contributing to solutions and welcoming unhoused individuals into their neighborhoods, and they are not at an increased risk of harm for doing so.

MESSAGE	EXAMPLE	CHANNEL	SUGGESTED MEDIUM
ADU PROJECT BUY-IN	Climate Change, Homelessness, and Corporation community initiatives	Printed or electronic information (e.g., e-mail, internet, or billboard)	Mass Interpersonal

¹⁵⁷ Golub, et al., *Delivering value to customers*, McKinsey Quarterly (June 2000), <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/delivering-value-to-customers>.

¹⁵⁸ Frank E. X. Dance & Carl E. Larson, *Speech Communication: Concepts and Behaviors*, 51-56 (New York, New York 1972). Intrapersonal communication is communication with oneself; Interpersonal communication is communication between people whose lives mutually influence one another and typically occurs in dyads; Group communication occurs when three or more people communicate to achieve a shared goal; Public communication is sender focused and typically occurs when one person conveys information to an audience; and Mass communication occurs when messages are sent to large audiences using print or electronic media. *Id.*

ADU PROJECT OPERATIONAL COMMUNICATION	Duties of members and Project Progress	Printed or electronic information 1-on-1 Staff Meetings	Interpersonal Group
RECEIVING FEEDBACK FROM COMMUNITY PARTNERS	Achievements, Praise, and Criticism	1-on-1 Groups	Interpersonal Group
ADU PROJECT PROGRESS	Briefings, Recruitments, Events, and Projects	Printed or electronic information Staff meetings. 1-on-1	Interpersonal Group Public Mass Communication
ADU PROJECT FINANCIAL UPDATES	Forecasts, Results, and Financial news	Printed or electronic	Group Public
ADU PROJECT ORGANIZATIONAL STRATEGIC COMMUNICATION	Visions, Goals/objectives, Strategies, and Organizational changes	Dialogue in meetings	Interpersonal Group
ADU PROJECT CORE VALUES	Values, Management philosophy, Employee philosophy, Policies, Guidelines, and Directives	Dialogue in meetings	Group Public

E. *Lessons from Seattle’s BLOCK Project*

Appropriate and effective messaging is a key component to the BLOCK Project’s success. Building off of Facing Homelessness’ campaign to humanize and give unhoused individuals a “face,” the BLOCK Project intends for its messaging to demystify fears about inviting a stranger to live in the homeowner’s backyard. In this sense, the target audience for the project’s messaging campaign is the greater Seattle community, particularly community members looking for a way to contribute to homeless solutions. Because the overarching message targets the local community, Facing Homelessness chose to convey that message with three simple words: “Just Say Hello.”¹⁵⁹ These three words are intended to relay to community members that, by working together, the community “can face homelessness by choosing to see the beauty of person in front of us rather than the issue that overwhelms

¹⁵⁹ FACING HOMELESSNESS, Just Say Hello Tour, Home, <http://www.justsayhellotour.com/homepage-1/> (last visited Apr. 29, 2018).

us.”¹⁶⁰ The BLOCK project is combating the stigma associated with homelessness by facilitating face-to-face conversations within the community. Potential host families are required to obtain consent from neighbors on their block in order to be approved for the program. This approach encourages community members to engage with one another about the human side of homelessness.

F. Takeaways

Persuasive and appropriate messaging is vital to the success of ADU projects targeting homelessness. First, ADU project managers should identify the target audience for framing their message. Next, project managers should craft a digestible message specific to their target audience considering the size and content of the message. Further, crafted messages should convey a value proposition, which identifies clear and demonstrable benefits for the message recipient. Finally, ADU project managers must consider whether intrapersonal, interpersonal, group, public, or mass communication mediums are the best forms to convey their carefully crafted messages.

CONCLUSION

U.S. cities are facing increasing rates of homelessness largely due to a severe lack of affordable housing. When cities and organizations utilize ADUs to house unhoused individuals, those small living spaces help combat rising homelessness. ADUs can be viable, cost-effective alternatives to traditional shelters that provide stable housing and community ties for individuals and families experiencing homelessness. As proven in municipalities like Seattle, Multnomah County, L.A. County, and Denver, cities and organizations across the country can use ADUs to help combat homelessness if they strategically consider the logistical, legal, and messaging considerations that accompany a homeless-oriented ADU program.

This report offers a blueprint to help guide cities as they navigate the unique challenges and benefits of offering ADUs to persons experiencing homelessness and to homeowners who want to help their neighbors. Local governments and organizations considering adopting similar programs must consider logistical decisions, such as how the project will be funded and staffed and how prospective homeowners and unit occupants will be screened. Further, project managers and homeowners should research and consult a legal expert regarding the applicable zoning laws, fees, tax and market value implications, and potential contractual relationships that arise throughout the life of the project. Finally, project managers should consider an effective messaging framework that garners support from the community by identifying the target audience, creating a digestible message, conveying added value, and determining the most effective medium to convey that message. Implementing an ADU project may require concentrated planning and effort, but this tool could have a promising impact on homelessness.

¹⁶⁰ FACING HOMELESSNESS, *supra* note 106.